



July 16, 1999

Ms. Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR99-1997

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127631.

The Texas Department of Transportation (the "Department") received a request to review bid documents. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987). As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

In this instance, you explain that the Department recently accepted bids for the construction of a highway project, which were all rejected because of bid irregularities. You explain that the Department intends to request bids again, thus the bidding is still competitive and release of prior bids to the public would "give an advantage to any bidder . . . and would impair the State's ability to get the best possible price on the contract." Because you have demonstrated that release of the bidding information would impair the Department's ability to receive the best possible price by giving an advantage to a bidder, you may withhold the requested information under section 552.104 until the contract is executed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue M. Lee".

Sue M. Lee  
Assistant Attorney General  
Open Records Division

SML\nc

Ref: ID# 127631

encl: Submitted documents

cc: Mr. Russell P. Lambert, P.E.  
Kinsel Industries, Inc.  
P.O. Box 750160  
Houston, Texas 77275-0160  
(w/o enclosures)